

**Local 17, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (The Building Contractors Association, Inc.) and Michael E. Murphy.** Case 2-CB-12908

September 14, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On June 24, 1992, Administrative Law Judge Howard Edelman issued the attached decision. The Charging Party filed exceptions and a supporting brief.

On January 11, 1993, the Board<sup>1</sup> issued an order remanding the proceeding to the judge to receive certain evidence and to issue a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations based on all the record evidence. On June 8, 1993, the judge issued the attached supplemental decision. No exceptions to the supplemental decision were filed.

The National Labor Relations Board has considered the decision, the supplemental decision, and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 17, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> Member Raudabaugh did not participate at this stage of the proceeding.

<sup>2</sup> The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Geoffery E. Dunham, Esq.*, for the General Counsel.

*Ira A. Sturm, Esq. (Manning, Raab, Dealy & Sturm)*, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on March 26, 1990, and May 6 and 7, 1991, in New York, New York.

On July 18, 1989, Michael Murphy filed a charge in the above-captioned case against Local 17, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Respondent). On September 1, 1989, a complaint issued alleging that

Respondent had refused to refer Murphy to carpenter jobs through its exclusive hiring hall, and refused to provide him with hiring hall information requested by Murphy in violation of Section 8(b)(1)(A) and (2) of the Act.

Briefs were filed by counsel for the General Counsel and counsel for Respondent. On a consideration of the briefs, the entire record, and on my observation of the demeanor of the witnesses in this case, I make the following

**FINDINGS OF FACT**

The Building Contractors Association, Inc. (the Association), is an organization composed of employers engaged in the construction industry in the New York City area. The Association exists for the purpose, inter alia, of representing employer-members in negotiating and administering collective-bargaining agreements with the District Council of New York City and vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, of which Respondent is a member. The employer-members of the Association annually purchase and receive at their New York facilities goods and products valued at in excess of \$50,000 which are shipped directly from points outside the State of New York.

It is admitted, and I conclude, that the employer-members of the Association are employers within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted, and I conclude, that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

The Association and Respondent have been parties to a long series of collective-bargaining agreements, including an agreement, the term of which was from July 1, 1987, to June 30, 1990. Article Six, subparagraph (a), section 2 provides that:

The first Carpenter on the jobsite shall be referred by the Union. The second Carpenter shall be the Employer's selection. The balance shall be 50% from the Union and 50% from the Employer. The Union will cooperate, in order to meet all legal requirements, and furnish qualified Carpenters when requested. A working Job Steward shall be appointed by the Union.

When four (4) or more Carpenters are employed, one (1) shall be the Foreman. The Employer may, in its sole discretion, designate a second foreman, who, if so designated, shall be from the local union in which jurisdiction the job is located.

When five (5) or more Carpenter Foremen are employed, there will be one (1) General Foreman designated by the Employer.

Nothing in this Section shall restrict an Employer's right to discharge any Carpenter for good reasons. If the man so discharged was obtained from the District Council, he shall be replaced from the same source in order to maintain the fifty-fifty ration of employment.

When an Employer, in compliance with this Section, requests the Local Union to send men to a job, the Local Union shall cooperate by sending only such as are experienced in the specific type of carpentry work being done on the said job by that Employer. If the Local Union is unable to supply suitable personnel, the District Council shall do so. There shall be no discrimi-

nation of any kind against any person covered by this agreement, based on race, religion, age, sex, national origin or union affiliation with respect to hiring, firing, or any other condition of employment.

Murphy is an admitted dissident within Respondent. He is, among other things, founder of a dissident organization within Respondent called "Carpenters for a Stronger Union" and edits a newspaper put out by this organization called "Hardhat News."

Murphy is also an admittedly skilled carpenter. Although classified as a journeyman, he has taken advanced training in various specialty skills like cabinet making. He can for all intents and purposes perform all carpentry skills required by any employer using Respondent's hiring hall.

Sometime in February 1989, Murphy, who had decided to run for an elected office in Respondent in the upcoming election scheduled for June 1989, met with Ben Schepis, Respondent business agent. During a conversation which took place Murphy mentioned that he might run for the position financial secretary and wondered how Frank Calciano, a Respondent business agent, might feel about it since Calciano's son was also planning to run for the position. Schepis told Murphy to speak to Frank Calciano himself.

Sometime in late March, Murphy met with Frank Calciano and asked him if his son was running for the position of financial secretary. Calciano indicated to Murphy that he was. Murphy, who had a good relationship with Frank Calciano's son, stated that under these circumstances he would consider running for another position and asked Calciano if he could expect an endorsement from him. Calciano replied, "I can't do anything to help you, but I won't do anything to hurt you." Murphy testified that he asked Calciano what he meant by that and Calciano replied, "Well, if you don't want to run, me and Benny Schepis will keep you working steady as a steward." Murphy then asked Calciano where they would send him and suggested a nonunion job near his home. Calciano asked him why he cared about that job but if he wanted the job he and Schepis could work it out.

Although Calciano was not called as a witness for Respondent, I do not credit Murphy's testimony that if he did not run for Respondent office he could work steady as a shop steward. First, Calciano's statement to Murphy, which I do credit to the effect that he would not either help or hurt him, strikes me as a clear unequivocal statement that would require no further explanation. It does not strike me as credible that Murphy would not understand Calciano's statement and ask for a further explanation. Moreover, the alleged response appeared to me as manufactured and self-serving. Secondly, it appears that it was Murphy who was seeking a particular nonunion job, probably because it was near his home. Respondent could not get him such job, but there was a practice within Respondent that if a member was responsible for organizing the job, or picketing the job, or doing what was necessary to convert it into a union job, then such member would be appointed to the position of shop steward at that job. Based on that testimony of Murphy which I credit, and the subsequent testimony of Schepis, described below, there is no evidence to suggest that if Murphy "turned the job around" he would not be awarded the shop steward job pursuant to Respondent's longstanding practice. Third, following Murphy's initial conversation with Schepis indicating

his intention to run for office, Murphy was thereafter appointed to a string of jobs through April 1989 and was appointed as the shop steward on each job. Such appointments are inconsistent with Murphy's testimony concerning Calciano's alleged statement to him.

Sometime around the beginning of May, on the night when nominations for officers in Respondent were taking place, Murphy had a second conversation with Schepis. During this conversation, Murphy testified that he discussed with Schepis his running for office and wanting to be assigned to a long term shop steward job. According to Murphy, Schepis told him that he would refer Murphy to a long term shop steward job if he would stop badmouthing the president of the District Council. Schepis testified that Murphy expressed interest in a nonunion job near his home and Schepis told him that if he helped turn the job around he should be appointed to the job of shop steward in accordance with Respondent's practice. For the reasons set forth above, I credit Schepis. Moreover, Schepis impressed me as a credible witness. I was impressed by his demeanor. His testimony was forthright and detailed. Further, his testimony on cross-examination was consistent with his testimony on direct.

On May 1, Murphy was laid off from his job. He had been appointed shop steward on this job. He then called up Respondent's hiring hall where he spoke to secretary Cecilia Lanza. Murphy testified that he told Lanza that he was laid off and was looking for work. Lanza admittedly did not ask Murphy whether he wanted to be placed on the hiring hall list. Lanza credibly testified that Murphy merely stated that he had been laid off. She did not interpret this statement to be a request to be placed on the hiring hall list. However, she did take down Murphy's statement as a written message which she passed on to Schepis. Lanza's testimony is corroborated exactly by a followup letter from Murphy, dated May 4, addressed to Schepis, which states, "This is to confirm the telephone message I left with the young woman who answered the phone . . . on May 1, 1989. I was laid off." The letter then goes on to describe the carpentry work left to be completed. There is a second paragraph which describes a grievance that Murphy wanted to file, which is unrelated to this case, and a third paragraph requesting Schepis return some personal items belonging to Murphy. There is absolutely no reference, express or implied, to any request to be placed on Respondent's hiring hall list. In view of my unfavorable impression as to Murphy's credibility, as described above, and in view of Murphy's May 4 letter which corroborates Lanza's testimony, I find that Murphy did not request at any time in connection with his May 1 layoff that he be placed on Respondent's hiring hall list.

Lanza, a secretary who handles Respondent's hiring hall list and essentially a neutral witness with excellent demeanor, gave very credible and detailed testimony as to the procedure followed by Respondent in order for an employee to be placed on Respondent's hiring hall list. If an employee wants to be placed on the hiring hall list he can come to the hiring hall personally and sign the hiring hall book himself. Such applicant would also fill out his social security number, telephone number, the type of work desired, and the date. If an employee calls in, he would speak to Lanza, or another secretary and would indicate that he wants to be placed on the hiring hall list. The secretary would then elicit from the applicant the same information required, as set forth above. A

new hiring hall list is prepared each month, and the prior months' list discarded.

On June 5, Murphy visited Respondent's office. He spoke to one of the secretaries present and requested to see certain hiring hall lists. The secretary told Murphy that he could not have access to such lists without the consent of a business agent. No business agent was in the office at that time. Murphy left. On June 7, Murphy sent Respondent a letter dated June 7 which read as follows:

Earlier this week I had come to the Local 17 office (June 5, 1989) to request in person an opportunity to examine the work book of unemployed carpenters in our local. The young woman working as a secretary there told me that she would have to get the consent of the Business Manager or one of the other officers of the local and that they were then all out. To date I have not received word as to when I can see the work book. Kindly do so.

On June 27, Murphy sent another letter to Respondent requesting to see the referral request list. This letter states as follows:

I am also requesting a copy of the job referral request list and the employer referral request list for the last year. I will pay all reasonable fees and costs for reproduction of this and the above requested lists.

I am still actively seeking employment as a union carpenter as I stated in my previous letter of May 4th, 1989.

Thereafter, on July 18, Murphy filed the instant unfair labor practice charge. Finally, in October he was advised by the Union that he could see the requested lists. He ultimately examined the lists in November.

Respondent's hiring hall records establish that following the election of officers in June, Respondent thereafter continued to refer Murphy to a succession of jobs. On each job Murphy was appointed to the position of shop steward.

#### Analysis and Conclusion

There is no question that Respondent's hiring hall is an exclusive hiring hall notwithstanding that the employer has the right to select 50 percent of the work force on the job. The Board concluded that the same hiring hall agreement between an employer association and a different Local of Respondent's International was an exclusive hiring hall provision. *Carpenters Local 608 (Various Employers)*, 279 NLRB 747, 754 (1986), *enfd.* 811 F.2d 149 (2d Cir. 1987). Under an exclusive hiring hall provision, Respondent has an affirmative obligation to represent all individuals seeking to use the hall in a fair and impartial manner. *Boilermakers Local 169 (Riley Stoker Corp.)*, 209 NLRB 140, 149-150 (1974).

In determining whether Respondent unlawfully refused to refer Murphy, General Counsel has the burden of proving that Murphy's dissident activities were a motivating factor in Respondent's refusal to refer. Once such factor is established the burden shifts to Respondent to establish the same action would have taken place in the absence of such activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

In the instant case, General Counsel has failed to establish that Murphy even requested such referral. It is admitted by Respondent that Murphy was a longtime dissident member of Respondent. When Murphy questioned Calciano, Respondent business agent, concerning their position should he run for office in Respondent, Calciano took a neutral position. In connection with obtaining a shop steward position at a presently nonunion job, Business Agent Schepis told Murphy that if he was able to help turn the job into a union job, according to Respondent's practice he would be awarded the shop steward position on the job. Moreover, the evidence established that following his announced intention to run for office in February, Respondent not only referred him to a succession of jobs, but he was appointed to the position of shop steward on each job. Thus, I conclude General Counsel has failed to establish Respondent's animus toward Murphy because of his dissident activities.

The evidence in this case establishes that following Murphy's layoff from the last job he was referred to by Respondent, he contacted Respondent's hiring hall secretaries and notified them of his layoff. However, his May 4 letter to Schepis which Murphy contends reiterated the message left with the secretaries covering the hiring hall, establishes a complaint about his layoff claiming there was more carpentry work to be performed, rather than a request to be placed on Respondent's hiring hall list. Thereafter, there is no further evidence that Murphy made any requests to be placed on Respondent's hiring hall list. Accordingly, I conclude that General Counsel has failed to establish that Murphy made an appropriate request to be placed on Respondent's hiring hall list. There is no evidence that Respondent unlawfully refused to refer Murphy for any reason, at any time.

General Counsel contends that Respondent violated the Act by promising Murphy a steady job as shop steward on a particular jobsite if he refrained from his dissident activities. The evidence establishes that the job in question was not even with an employer who had a contract with Respondent. The employer was nonunion. The credible evidence establishes that Schepis did tell Murphy that if he helped turn the job around into a union job then, pursuant to Respondent's longstanding practice, they would appoint him to be the shop steward on the job. Moreover, as set forth above, the evidence established that during the period between Murphy's announcement that he was considering running for office and the time of the nominations, Murphy was referred to a continuous series of jobs and on each job was appointed to the position of shop steward. Further, following the election in June, Murphy was similarly referred to a succession of jobs, on each of which he was appointed to the position of shop steward. Accordingly, I conclude that General Counsel has failed to prove this allegation.

General Counsel contends that Respondent unlawfully refused to provide Murphy with copies of the hiring hall lists notwithstanding Murphy's oral and written requests to do so. It is established that there is a duty imposed on a union to deal fairly with an employee's request for job referral information and that an employee is entitled to access to job referral lists to determine his position on the list in order to protect his referral rights. *Teamsters Local 282 (General Contractors)*, 280 NLRB 733, 735 (1986). Moreover, the Board has been liberal in requiring production of such lists even if the employee requesting such lists might have other

reasons for the use of the lists, like for use in an election campaign. *Carpenters Local 608*, supra at 757.

In the instant case, although the initial oral request and the letter dated June 7 did not state a reason for access to the lists, the second letter dated June 27 did state in the paragraph immediately following the request to see the list that Murphy was “actively seeking employment as a union carpenter.” I conclude that a fair inference from the requests was that at least one reason Murphy was seeking access to the lists was to protect his referral rights. Respondent could have clarified the reason for such request by responding to Murphy’s letters, but chose not to do so. Respondent counsel contends that Respondent considered the letters as requests for information under the LMRDA and took the position that such lists were not discussable under the LMRDA. There is no evidence in the record to support such contention. Respondent only gave Murphy access to such list after the underlying unfair labor practice case was filed. Under all the circumstances, I conclude that Respondent violated Section 8(b)(1)(A) of the Act by failing in a timely manner to provide Murphy with access to its hiring hall lists.

#### CONCLUSIONS OF LAW

1. The Association and its employer-members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By denying Michael Murphy the right to review and inspect hiring hall records maintained by Respondent, Respondent has breached its fair duty of representation in violation of Section 8(b)(1)(A) of the Act.
4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom. However, since Respondent has supplied Murphy with the hiring hall lists and related materials he requested and to which he was entitled, I shall not recommend any affirmative relief, except the posting of an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

The Respondent, Local 17 United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Denying employees whom it represents in collective bargaining the right to review or inspect hiring hall records, or refusing to provide such employees information on request with regard to the operation of its hiring hall, when such information or request is related to an alleged failure to prop-

<sup>1</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

erly refer such employees because the employees engage in intraunion political activities or other protected concerted activities.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor requests by Michael Murphy to inspect or review hiring hall records, and provide such employee information on request with regard to the operation of its hiring hall, when such requests are related to the alleged failure to properly refer such employee.

(b) Post at its business offices, hiring hall, and meeting places copies of the attached notice marked “Appendix.”<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

#### APPENDIX

#### NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT deny employees whom we represent in collective bargaining the right to review, inspect, photocopy, or duplicate our hiring hall records (on payment of reasonable costs), or refuse to provide such employees information on request, with regard to the operation of our hiring hall, where such information or request is related to our alleged failure to properly refer such employees because said employees engaged in intraunion political activities or other protected concerted activities.

WE WILL NOT arbitrarily deny employees whom we represent in collective bargaining the right to review, inspect, photocopy, or duplicate our hiring hall records (on payment of reasonable costs), or refuse to provide such employees information with regard to the operation of our hiring hall, where such information or request is related to an alleged failure to properly refer such employees.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL honor requests by Michael Murphy to inspect, review, photocopy, or duplicate our hiring hall records (on payment of reasonable costs), and provide such employees information, on request, with regard to the operation of our hiring hall where such requests are related to our alleged failure to properly refer such employees.

LOCAL 17, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO (VARIOUS)

*Geoffery E. Dunham, Esq.*, for the General Counsel.  
*Scott A. Weiss, Esq. (Donald L. Sapir, Esq.)*, for the Respondent.

## SUPPLEMENTAL DECISION

### STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. On January 11, 1993, the Board issued an order remanding the above proceeding to the administrative law judge for the sole purpose of "receiving testimony and arguments regarding Shepis' conviction."

Pursuant to the Board's remand Order, the trial of this case was reopened on March 18, 1993. The only evidence submitted was General Counsel's Remand Exhibit 1, which sets forth the bribery convictions of Shepis. No testimony was elicited by any party. Mr. Murphy requested he be allowed to state his position orally on the record and such request was permitted. Counsel for Respondent requested that he be permitted to make oral argument, and such request was permitted. Counsel for General Counsel declined oral argument but submitted a written brief. No other briefs were submitted.

In reaching my original conclusion that Respondent did not discriminatorily refuse to refer Murphy to jobs, I relied primarily on my generally unfavorable impression as to Murphy's credibility.

In this connection, Murphy testified as set forth in my original decision that sometime in late March, he met with Frank Calciano and asked Calciano if his son was running for the position of financial secretary. Calciano indicated to Murphy that he was. Murphy, who had a good relationship

with Frank Calciano's son stated that under these circumstances he would consider running for another position and asked Calciano if he could expect an endorsement from him. Calciano replied, "I can't do anything to help you, but I won't do anything to hurt you." Murphy testified that he then asked Calciano what he meant by that and Calciano replied, "Well, if you don't want to run, me and Benny Schepis will keep you working steady as a steward." Murphy next asked Calciano where they would send him, and suggested a nonunion job near his home. Calciano asked him why he cared about that job but if he wanted the job he and Schepis could work it out."

As set forth in my initial decision, I did not conclude that Murphy was a credible witness. However, I did credit Murphy's testimony that Calciano told Murphy when Murphy asked for an endorsement that he, Calciano said that he would neither help or hurt him. As further set forth in my initial decision, this statement struck me, and still strikes me as a clear and unequivocal statement that required no further amplification. My reasons for discrediting Murphy are further set forth in the remaining portions of that same paragraph.

In my original decision, Murphy contends that he had a discussion with Shepis in which he allegedly told Shepis that he was running for office and he also wanted to be assigned to a long term steward job. According to Murphy, Shepis replied that he would refer him to the nonunion job Murphy wanted, if he would stop badmouthing the president of the District Council. It appeared to me from the record that Murphy was referring to the nonunion job near his home). Shepis, in my opinion, notwithstanding his subsequent felony convictions,<sup>1</sup> credibly testified that if Murphy were able to help turn this nonunion job into a Respondent union job, he would make him the shop steward in accordance with Respondent's longstanding policy. I am not aware of any other way that Shepis could refer Murphy to a nonunion job. Thus, I credit Shepis' testimony as to this conversation.

Accordingly, having duly considered the subsequent bribery convictions of Shepis, the oral arguments, and brief, I reaffirm my original findings, conclusions, and recommendations.

<sup>1</sup> See G.C. Exh. 1 of the remand.